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IN THE

SUPREME COURT OF THE UNITED STATES

No. .....

WILLIAM G. MILLIKEN, et al.,

Petitioners,

vs.

RONALD BRADLEY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioners pray that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on February 23, 1972. By such judgment, the United States Court of Appeals declined to review certain opinions and orders of the United States District Court for the Eastern District of Michigan, Southern Division, which decided that the School District of the City of Detroit was a *de jure* segregated public school system and directed the petitioners to prepare a "Metropolitan" plan for the integration of the Detroit and suburban-Detroit School Systems.

OPINIONS AND ORDERS BELOW

The opinion of the District Court, entitled "Ruling on Issue of Segregation," was entered on September 27, 1971 and appears in the Appendix hereto, 1a to 27a. The subsequent order of the District Court, dated November 5, 1971, directing the submission of a "metropolitan plan of desegregation" also appears in the Appendix hereto, 29a to 30a. The District Court's subsequent findings of fact and conclusions of law, based upon the "Ruling on Issue of Segregation," which determined that "relief of segregation in the public schools of the City of Detroit cannot be accomplished within the corporate geographical limits of the city," also appears in the Appendix hereto, 37a to 43a, as does the "Ruling on Propriety of Considering a Metropolitan Remedy to Accomplish Desegregation of the Public Schools of the City of Detroit," where the District Court found the power and "is required to consider a metropolitan remedy for desegregation," appearing in the Appendix hereto, 31a to 36a.

The judgment of the United States Court of Appeals for the Sixth Circuit filed February 23, 1972, dismissing the appeal for want of a "final" decision, appears in the Appendix hereto, 44a to 45a.

Opinions of the United States Court of Appeals rendered at prior stages of the present proceeding are reported in 433 F2d 897 and 438 F2d 945.

JURISDICTION TO REVIEW

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on February 23, 1972. This petition for certiorari was filed within 90 days of that date.

The jurisdiction of the Court is invoked under Section 1291 of Title 28, United States Code.

QUESTIONS PRESENTED

I.

Where the United States District Court, after months of hearing testimony and argument, issues a "Ruling on Issue of Segregation," which makes extensive findings of fact and conclusions of law and concludes that *de jure* segregation exists in the Detroit Public School system, and the District Judge thereafter enters an order, dated November 5, 1971, which directs the State officer-defendants in the case to submit "a metropolitan plan of desegregation" to the District Court, and the District Judge, repeatedly referring to his "continuing jurisdiction," thereafter limits the proceedings and proofs to the question of how many geographically and politically independent school districts should be compelled, by order of the Federal Court, to join with the Detroit Public School system so as to achieve, through massive cross-district busing of students, a desirable racial balance in the new Federal Court-created super-school district, is this November 5, 1971 order of the District Court a "final decision" for purposes of seeking judicial review?

The Petitioners contend that the answer is "YES," but the United States Court of Appeals said "NO."

II.

Are the findings of fact and conclusions of law which underlie the decision of *de jure* segregation clearly erroneous?

The Petitioners contend that the answer is "YES," but the United States Court of Appeals refused to answer the question.

III.

Is a metropolitan plan constitutionally inappropriate in the complete absence of a finding either that the geographically and politically independent suburban Detroit school districts are themselves guilty of *de jure* segregation or, alternatively, that the school district boundary lines were created and maintained with the intent of promoting a dual school system?

The Petitioners contend that the answer is "YES," but the United States Court of Appeals refused to answer the question.

STATUTORY PROVISIONS INVOLVED

Section 1291 of Title 28, United States Code, provides:

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

STATEMENT OF THE CASE

Plaintiffs commenced this litigation on August 18, 1970, against the Board of Education of the City of Detroit, its members and superintendent of schools, the Governor, Attorney General, State Board of Education and State Superintendent of Public Instruction of the State of Michigan. The State of Michigan was not named as a party Defendant. Plaintiffs challenged, on constitutional grounds, a legislative enactment of the State of Michigan, 1970 PA 48, MCLA 388.171a et seq; MSA 15.2298(1a) et seq, which allegedly delayed and interferred with the implementation of a voluntary plan of partial high school pupil desegregation which had been adopted by the Detroit Board of Education. Plaintiffs further alleged the existence of constitutionally impermissible racially identifiable pattern of faculty and student assignments in the Detroit Public Schools which pattern, they claimed, was the result of official policies and practices of the defendants and their predecessors in office.

At the conclusion of a hearing held upon Plaintiffs' application for preliminary injunctive relief, the District Court denied all relief on the grounds that the existence of racial segregation in the Detroit School District had not yet been established. The court further dismissed the action as to the Governor and the Attorney General. Plaintiffs promptly appealed, on an emergency basis, to the United States Court of Appeals for the Sixth Circuit which declared the impugned statute (which had not been ruled upon below) to be unconstitutional and ordered reinstatement of the Governor and Attorney General as parties. 433 F2d 897.

Upon remand, plaintiffs moved in the District Court for an order requiring immediate implementation of the

voluntary plan of partial desegregation which had been purportedly impeded by the impugned State statute. After receiving additional plans proferred by the Detroit School District defendants and conducting a hearing thereon, the district court entered an order approving an alternate plan which plaintiffs opposed as being constitutionally insufficient. Plaintiffs again claimed an emergency appeal, but the United States Court of Appeals refused to reach the merits of the appeal and remanded the case to the District Court with instructions that the entire case be tried on its merits forthwith. 438 F2d 945.

After a lengthy trial, the District Court, on September 27, 1971, entered its "Ruling on Issue of Segregation." (1a). The court concluded, both as a matter of fact and of law, that the public schools in Detroit are "segregated on a racial basis" (12a), and that both state and local defendants "have committed acts which have been causal factors in the segregated condition..." (20a).

The Court went on to state:

> "Having found a de jure segregated public school system in operation in the City of Detroit, our first step, in considering what judicial steps must be taken...." (26a).

Thereafter, the District Court gave certain oral instructions to the counsel for the State officer-defendants. These instructions were formalized by the Order of November 5, 1971, wherein it was ordered:

> "The Court having entered its findings of facts and conclusions of law on the issue of segregation on September 27, 1971;
>
> "...

"IT IS FURTHER ORDERED that the State defendants submit a metropolitan plan of desegregation within 120 days." (29a - 30a)

Following submission of several plans submitted by various parties, including the defendant State Board of Education, the Court, on March 24, 1972 proceeded to consider whether school district lines should be revised or ignored to combine city and suburban school populations in a way to achieve integration on a metropolitan basis. Brushing aside the arguments of the State officer-defendants, the Court held that any further discussion of the question of the existence of *de jure* segregation had been finally foreclosed by the "Ruling on Issue of Segregation".

"The State defendants in this case take the position, as we understand it, that no 'state action' has had a part in the segregation found to exist. This assertion disregards the findings already made by this court, and the decision of the Court of Appeals as well.... (33a).

"...

"The schedule previously established for the hearing on metropolitan plans will go forward as noticed, beginning March 28, 1972." (36a).

Thereafter, on March 28, 1972, the Court issued its "Findings of Fact and Conclusions of Law on Detroit-Only Plans of Desegregation." Specifically incorporating its September-filed "Ruling on Issue of Segregation," the Court found :

"...

"1. The court has continuing jurisdiction of this action for all purposes, including the granting of effective relief. See Ruling on Issue of Segregation, September 27, 1971." (40a).

"2. On the basis of the court's finding of illegal school segregation, the obligation of the school defendants is to adopt and implement an educationally sound, practicable plan of desegregation that promises realistically to achieve now and hereafter the greatest possible degree of actual school desegregation...." (40a).

"...

"That the court must look beyond the limits of the Detroit school district for a solution to the problem of segregation in the Detroit public schools is obvious...." (42a).

Proceedings in the District Court are still continuing as of the date of the filing of this petition.

The State officer-defendants requested review of the District Court's Order of November 5, 1971, in the United States Court of Appeals for the Sixth Circuit, by the filing of a claim of appeal on December 3, 1971. On Motion of the plaintiffs, the Court of Appeals, on February 23, 1972, dismissed the appeal. (44a).

REASONS FOR GRANTING THE WRIT

I.

The Order Of November 5, 1971, Is A "Final Decision" Within The Meaning Of Title 28 U.S.C. §1291.

Section 1291 of Title 28 provides that the Federal courts of appeals "shall" have jurisdiction of appeals from "all final decisions of the district courts."

On scrutiny of even the limited record appended hereto as an appendix, it indisputably appears that:

(1) The District Court has found that "both the State of Michigan and the Detroit Board of Education have committed acts which have been causal factors in the segregated condition of the public schools of the City of Detroit." (20a)

(2) The District Court conclusively determined that "the circumstances of the case require judicial intervention and equitable relief...." (27a). As the Court stated it: "a right and a violation have been shown." (31a).

(3) The District Court, relying upon this ruling, has refused to hear any more proofs or argument relating to the question of whether there was, in fact, any state action as a predicate for the segregated condition of the Detroit Public Schools. (33a).

(4) The District Court, by way of equitable relief, has rejected all available remedies other than revising or ignoring school district boundary lines so as to combine the historically and geographically independent city and sub-

urban school populations in a way to achieve integration on a metropolitan basis. (42a).

Thus, the special and unusual circumstances here presented are that the District Court, as a matter of "continuing jurisdiction (40a), is now conducting the separate and distinct remedy phase of the trial, a phase *limited* solely to the question of *how many* legally separate school districts should be lumped together, by order of the Federal District Court, to the new Federal court-created super school district of the metropolitan Detroit area.

While that remedy phase of the matter is being litigated, the State officer-defendants here seek judicial review of the initial phase. We seek access to a forum so that we may question whether the finding of a "violation" is clearly erroneous.

No practical difficulty is thereby presented. The transcript of testimony on the initial phase of the District Court proceeding is already prepared. The appeal on the initial phase can proceed without any conflict with the continuing proceeding on the remedy phase now before the District Court.

Indeed, the practicalities of the situation mandate review without further delay. The Court of Appeals, and ultimately this Court, should review this matter before hundreds of thousands of children are loaded onto school buses to attend school long distances from home and the educational programs, financing and the entire operation of scores of school districts are disrupted. The next school year begins in September. The District Judge has, as yet, given no indication of when he will announce which plan the Court is adopting or what the effective date of

the plan will be, thereby leaving open the distinct possibility that appellate review may not be completed prior to the effective date of the plan, unless review commences now.

The correctness of the decision below, finding a lack of finality, is open to serious question. The refusal of the Sixth Circuit to permit an appeal on this record cannot be justified in light of the rule plainly adopted by this Court in *Brown Shoe Co.* v. *United States,* 370 US 294, at 306-309 (1962).

In *Brown,* the question was whether an order for divestiture in a Clayton Anti-Trust Act (Title 15 U.S.C. §25) prosecution was "final" where the single provision of the judgment by which its finality might be questioned was one requiring the appellant there to propose a plan for effectuating the trial court's order or divestiture. The Court found the requisite finality.

In *Brown,* the propriety of divestiture was considered in the trial court and was disputed before this Court on an "all or nothing" basis. (370 US at 309). Here, the question of the existence of *de jure* segregation was fully considered below. Here, we dispute the ruling of *de jure* segregation in the Detroit Public Schools and the later holding that a metropolitan remedy, necessarily involving massive cross-district busing, is constitutionally required, on the same "all or nothing" basis.

Repetitive judicial consideration of the same question will not occur here any more than it did in *Brown.* The issue here, like the issue in *Brown,* is ripe for review in the here and now, and may, thereafter, be foreclosed.

It is axiomatic under our jurisprudential experience that for purposes of appellate review a decision "final"

within the meaning of Title 28 U.S.C. §1291 "does not necessarily mean the last order possible to be made in a case." *Gillespie* v. *United States Steel Corp.*, 379 US 148, at 152 (1964).

The delay in withholding review of the issue until the full details of a busing plan have been approved by the District Court is clearly and profoundly inimical to the public interest. The unsettling influence of uncertainty as to the affirmance of the initial, underlying decision of *de jure* segregation, which will compel massive cross-district busing, would only make still more difficult the task of operating a system of free public schools.

There are issues for the here and now. The order in question is at least within the twilight zone of finality. A Detroit-only plan, if constitutionally required, could involve 300,000 children. A metropolitan plan for the Detroit and suburban school districts could involve 86 separate school districts and 1,000,000 children. Both plans involve massive busing of school children. The public interest here mandates a practical rather than a technical construction of the right of access to Federal appellate review.

II.

The Findings Of Fact, And Conclusions Of Law, Which Underlie The Decision That De Jure **Segregation Exists In The Detroit Public School System, Are Clearly And Patently Erroneous.**

In the event that this petition is granted, the State officer-defendants believe that they can demonstrate through thorough analysis of the testimony and exhibits, that the findings of fact made below — insofar as they

seem to support a finding of *de jure* segregation — are clearly erroneous, F.R.C.P. 52(a). The conclusions of law are also patently in error.

It was not until 1954 that this Court reconsidered and rejected the "separate but equal" doctrine. *Brown* v. *Board of Education of Topeka,* 347 US 483 (1954). The Supreme Court of the State of Michigan had, however, some 64 years prior to this Court's decision in *Brown* rejected the "separate but equal" doctrine as violating *State* law. *Ferguson* v. *Gies,* 82 Mich 358 (1890). By Act 130 of the Public Acts of 1885, the Michigan legislature made it a criminal offense for any person to deny equal treatment to any other person, for reasons based on race, in any place of public accommodation within this State. In the one reported case where a school district sought to segregate by regulation, its actions were promptly nullified by the legislature and the Michigan Supreme Court. *People ex rel Workman* v. *Board of Education of Detroit,* 18 Mich 399 (1869). The State of Michigan does not now have, nor has the State ever countenanced, a "dual school system." *Racial segregation in public education was declared to be a violation of the public policy of the State of Michigan in 1867,* nearly a century in advance of this Court's decision in *Brown.* See review of public policy of State of Michigan in *Beech Grove Investment Company* v. *Civil Rights Commission,* 380 Mich 405, at 434-435 (1968).

The District Court, in its "Ruling on Issue of Segregation," stated the following:

> "... The principal causes undeniably have been population movement and housing patterns, but state and local governmental actions, including school board actions, have played a substantial role in promoting segregation. It is, the Court believes, unfortunate that

> we cannot deal with public school segregation on a no-fault basis, for if racial segregation in our public schools is an evil, *then it should make no difference whether we classify it de jure or de facto* . . . ." [Emphasis supplied] (20a)

Primarily, the evidence upon which the District Court relied concerned segregated patterns in housing. None of the defendants has any constitutional or statutory power over housing. Much of this evidence attempted to show that the *Federal* government, principally through its public housing, VA and FHA mortgage insurance programs, had been a willing partner with *private* individuals and firms in the creation and perpetuation of racially segregated neighborhoods, even to the point of insisting upon them. Appendix 9a. In admitting such evidence, over continuing objections of defendants, the District Court ignored the clear and binding commands of the Court of Appeals for the Sixth Circuit.

The Sixth Circuit — prior to deciding not to decide *this* case — had quite wisely held that evidence of alleged discrimination in the public and private housing markets should be *excluded* from the trial of this type of case. The Sixth Circuit reasoned quite correctly that such discrimination is caused, if in fact it does exist, by persons other than the school officials. It is a situation the Sixth Circuit reasoned, over which educational officials may have no power. We emphasize here that none of the defendants has any power over housing. Therefore, the Sixth Circuit concluded, appropriate relief is available as against those who infringed upon rights in housing in a civil action with those wrong-doers as defendants, rather than in a school case with school officials as defendants. *Deal* v. *Cincinnati Board of Education* (Deal I), 369 F2d 55, at 60-61 (CA 6, 1966), cert den 389 US 847. This ruling was restated

with vigor in *Deal* v. *Cincinnati Board of Education* (Deal II), 419 F2d 1387, at 1392 (CA 6, 1969), cert den 402 US 962.

The concept has also been stated in *Davis* v. *School District of Pontiac,* 309 F Supp 734 (ED Mich, 1970), aff'd 443 F2d 573 (CA 6, 1971) and *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 US 1, at 22-23, (1971), where this Court said:

> "The constant theme and thrust of every holding from *Brown I* to date is that state-enforced separation of races in public schools is discrimination that violates the Equal Protection Clause. The remedy commanded was to dismantle dual school systems.
>
> "We are concerned in these cases with the elimination of the discrimination inherent in the dual school systems, not with myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious, or ethnic grounds. The target of the cases from *Brown I* to the present was the dual school system. The elimination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage. It would not serve the important objective of *Brown I* to seek to use school desegregation cases for purposes beyond their scope, although desegregation of schools ultimately will have impact on other forms of discrimination. We do not reach in this case the question whether a showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by

a school desegregation decree. This case does not present that question and we therefore do not decide it.

"Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools."

The District Court, in its decision on *de jure* segregation found ". . . that both the State of Michigan and the Detroit Board of Education have committed acts which have been causal factors in the segregated condition of the public schools of the City of Detroit . . ." (20a). It must be emphasized that the State of Michigan is not a party defendant herein. There is no recognized principle in our jurisprudence under which a suit against certain state officers may be used as a launching pad for findings against the state itself.

Aside from evidence relating to housing patterns, the record contains no evidence of a pattern or scheme, but rather evidence which at best shows only a few random and isolated incidents. Thus, for example, one finding of fact relates to an isolated incident in which a lowly functionary of the local school board had authorized the busing of a small number of black students past a white school to attend a newer school in a black neighborhood. (11a). This incident was isolated in scope to a few students during a relatively short period of time. The record shows that the problem was promptly corrected as soon as it was brought to the attention of policy-making officials.

The District Court ruled, based on 30 specific findings, that there was no *de jure* segregation of faculty in the Detroit public schools. Yet, the District Court concluded that the *same defendants* were guilty of *de jure* segregation as to the assignment of pupils. (15a).

The District Court's findings concerning *de jure* segregation in school attendance patterns were, in large part, of the most general nature. In *Keyes* v *School District No. 1, Denver, Colorado,* 445 F2d 990, 1002-1007 (1971), Cert grant, ... US ..... (1972), 30 L Ed 2d 728 (1972), the Tenth Circuit Court affirmed findings of *de jure* segregation as to *specific* schools, but no others, *and ordered a remedy only in those* **specific** *schools where* **de jure** *segregation existed.* Herein, the District Court made broad findings of *de jure* segregation as to pupil attendance and, on that basis, jumped to a metropolitan remedy *without considering specific schools* in making its findings.

This appeal, therefore, affords an excellent vehicle for a determination by this Court as to whether as a matter of law a condition of *de jure* segregation may be said to exist where the evidence shows little more than a few unrelated incidents, isolated as to scope and duration, involving local officials, and no wrongdoing by the State officer-defendants, but some possible wrong-doing in the area of housing by agencies of the Federal government and by private individuals.

If *de jure* segregation can be said to exist on this record, then it appears that there is no longer any valid distinction to be made between *de jure* and *de facto* segregation. (20a). And, if that is so, this Court should clearly so state.

III.

A Metropolitan Plan Of Desegregation Is Constitutionally Inappropriate In The Complete Absence Of A Finding Either That The Geographically And Politically Independent Surburban Detroit School Districts Are Themselves Guilty Of De Jure Segregation Or, Alternatively, That The School District Boundary Lines Were Created And Maintained With The Intent Of Promoting A Dual School System.

This is not ordinary, run-of-the-mill litigation. The case poses—if this Court chooses to acknowledge and reach it—a significant aspect of a wide, growing and disturbing problem.

The District Judge in this case first, in substance, abolished the distinction between segregation *de facto* and segregation *de jure*. (Reason No. II, supra.)

Then, the District Judge proceeded to decide (1) that busing was the only adequate remedy available, (2) that a Detroit-only busing plan was inadequate, (3) and, therefore, that a metropolitan plan was the only possible remedy in this case. (35a; 41a; 42a).

Having so decided, the District Judge then commenced a new phase of the case limited to the question of how many of the 700,000 or so children in the 86 independent suburban Detroit school districts should be included in his metropolitan plan.

Busing is, of course, an available instrument to provide a better educational opportunity to children in substandard or *de jure* segregated schools. For such children, an im-

perfect answer today may prove to be far more valuable than a more perfect answer tomorrow. For a child, tomorrow may be too late. Busing must, however, be recognized for what it is, an imperfect and temporary tool, a crutch and not a cure.

As far as we know, neither this Court nor any Court of Appeals has ever approved the use of busing on the scale here contemplated. While a few decisions do speak of "piercing the veil" where a system of *de jure* segregation is perpetuated by carefully gerrymandered school district lines, no decision has ever approved the lumping of politically and geographically independent suburban school districts into an urban busing plan simply because they happen to be there.[1]

No finding of the District Court indicates the existence of *de jure* segregation in the suburban school districts. Likewise, no finding of the District Court indicates that these school district lines were drawn for any improper purpose or by any improper method.

Then, there is the whole question of the jurisdiction, i.e., the power, of the Federal District Court to adopt a metropolitan plan without a specific finding of *de jure* segregation as to the included suburban school districts.

If the true basis of the District Court's action rests upon an implicit finding that the schools in Detroit are substandard, can the Judge without any further ado simply order children bused into these schools from the suburbs? Is not the answer to this problem in the area of school

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[1] Compare *Haney* v *County Board of Sevier County*, 410 F2d 920 (CA 8, 1969) and *Bradley* v *School Board of the City of Richmond*, ——— F Supp ——— (ED Va, dec. Jan. 5, 1972), where the Court found a state-wide policy of *de jure* segregation in the schools.

finance and construction rather than massive cross-district busing?

Can the District Court alter local control of schools by creating a super school district that might well thereafter constitute the largest school district in the United States?

Even assuming that busing is an appropriate instrument for dealing with the problem of the children attending the Detroit School System, this case poses the important and difficult question of whether a metropolitan plan of busing may ever be used by a Federal court in the total absence of any finding of a metropolitan-wide *de jure* policy of segregation.

CONCLUSION

For the aforegoing reasons, a write of certiorari should issue to review the judgment of the Sixth Circuit.

Respectfully submitted,

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Dated: May 5, 1972

APPENDIX

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United States District Court, Eastern District of Michigan, Southern Division:

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Ruling On Propriety of Considering A Metropolitan Remedy To Accomplish Desegregation Of The Public Schools Of The City of Detroit 31a

Findings Of Fact And Conclusions Of Law On Detroit-Only Plans Of Desegregation 37a

United States Court of Appeals For The Sixth Circuit:

Order Of The United States Court Of Appeals For the Sixth Circuit 44a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al., Plaintiffs, v. WILLIAM G. MILLIKEN, et al., Defendants, DETROIT FEDERATION OF TEACHERS, LOCAL No. 231, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, Defendant-Intervenor, and DENISE MAGDOWSKI, et al., Defendants-Intervenor	CIVIL ACTION NO. 35257

RULING ON ISSUE OF SEGREGATION

This action was commenced August 18, 1970, by plaintiffs, the Detroit Branch of the National Association for the Advancement of Colored People* and individual parents and students, on behalf of a class later defined by order of the Court dated February 16, 1971, to include "all school children of the city of Detroit and all Detroit resident parents who have children of school age." Defendants are the Board of Education of the City of Detroit, its members and its former superintendent of schools, Dr. Norman A.

* The standing of the NAACP as a proper party plaintiff was not contested by the original defendants and the Court expresses no opinion on the matter.

Drachler, the Governor, Attorney General, State Board of Education and State Superintendent of Public Instruction of the State of Michigan. In their complaint, plaintiffs attacked a statute of the State of Michigan known as Act 48 of the 1970 Legislature on the ground that it put the State of Michigan in the position of unconstitutionally interfering with the execution and operation of a voluntary plan of partial high school desegregation (known as the April 7, 1970 Plan) which had been adopted by the Detroit Board of Education to be effective beginning with the fall 1970 semester. Plaintiffs also alleged that the Detroit Public School System was and is segregated on the basis of race as a result of the official policies and actions of the defendants and their predecessors in office.

Additional parties have intervened in the litigation since it was commenced. The Detroit Federation of Teachers (DFT) which represents a majority of Detroit Public School teachers in collective bargaining negotiations with the defendant Board of Education, has intervened as a dedefendant, and a group of parents has intervened as defendants.

Initially the matter was tried on plaintiffs' motion for preliminary injunction to restrain the enforcement of Act 48 so as to permit the April 7 Plan to be implemented. On that issue, this Court ruled that plaintiffs were not entitled to a preliminary injunction since there had been no proof that Detroit has a segregated school system. The Court of Appeals found that the "implementation of the April 7 Plan was thwarted by State action in the form of the Act of the Legislature of Michigan," (433 F.2d 897, 902), and that such action could not be interposed to delay, obstruct or nullify steps lawfully taken for the purpose of protecting rights guaranteed by the Fourteenth Amendment.

The plaintiffs then sought to have this Court direct the defendant Detroit Board to implement the April 7 Plan by the start of the second semester (February, 1971) in order to remedy the deprivation of constitutional rights wrought by the unconstitutional statute. In response to an order of the Court, defendant Board suggested two other plans, along with the April 7 Plan, and noted priorities, with top priority assigned to the so-called "Magnet Plan." The Court acceded to the wishes of the Board and approved the Magnet Plan. Again, plaintiffs appealed but the appellate court refused to pass on the merits of the plan. Instead, the case was remanded with instructions to proceed immediately to a trial on the merits of plaintiffs' substantive allegations about the Detroit School System. 438 F.2d 945 (6th Cir. 1971).

Trial, limited to the issue of segregation, began April 6, 1971 and concluded on July 22, 1971, consuming 41 trial days, interspersed by several brief recesses necessitated by other demands upon the time of Court and counsel. Plaintiffs introduced substantial evidence in support of their contentions, including expert and factual testimony, demonstrative exhibits and school board documents. At the close of plaintiffs' case, in chief, the Court ruled that they had presented a prima facie case of state imposed segregation in the Detroit Public Schools; accordingly, the Court enjoined (with certain exceptions) all further school construction in Detroit pending the outcome of the litigation.

The State defendants urged motions to dismiss as to them. These were denied by the Court.

At the close of proofs intervening parent defendants (Denise Magdowski, et al.) filed a motion to join, as parties 85 contiguous "suburban" school districts—all within the so-called Larger Detroit Metropolitan area. This

motion was taken under advisement pending the determination of the issue of segregation.

It should be noted that, in accordance with earlier rulings of the Court, proofs submitted at previous hearings in the cause, were to be and are considered as part of the proofs of the hearing on the merits.

In considering the present racial complexion of the City of Detroit and its public school system we must first look to the past and view in perspective what has happened in the last half century. In 1920 Detroit was predominantly white city—91%—and its population younger than in more recent times. By the year 1960 the largest segment of the city's white population was in the age range of 35 to 50 years, while its black population was younger and of childbearing age. The population of 0-15 years of age constituted 30% of the total population of which 60% were white and 40% were black. In 1970 the white population was principally aging—45 years—while the black population was younger and of childbearing age. Childbearing blacks equaled or exceeded the total white population. As older white families without children of school age leave the city they are replaced by younger black families with school age children, resulting in a doubling of enrollment in the local neighborhood school and a complete change in student population from white to black. As black inner city residents move out of the core city they "leap-frog" the residential areas nearest their former homes and move to areas recently occupied by whites.

The population of the City of Detroit reached its highest point in 1950 and has been declining by approximately 169,500 per decade since then. In 1950, the city population constituted 61% of the total population of the standard

metropolitan area and in 1970 it was but 36% of the metropolitan area population. The suburban population has increased by 1,978,000 since 1940. There has been a steady out-migration of the Detroit population since 1940. Detroit today is principally a conglomerate of poor black and white plus the aged. Of the aged, 80% are white.

If the population trends evidenced in the federal decennial census for the years 1940 through 1970 continue, the total black population in the City of Detroit in 1980 will be approximately 840,000, or 53.6% of the total. The total population of the city in 1970 is 1,511,000 and, if past trends continue, will be 1,338,000 in 1980. In school year 1960-61, there were 285,512 students in the Detroit Public Schools of which 130,765 were black. In school year 1966-67, there were 297,035 students, of which 168,299 were black. In school year 1970-71 there were 289,743 students of which 184,194 were black. The percentage of black students in the Detroit Public Schools in 1975-76 will be 72.0%, in 1980-81 will be 80.7% and in 1992 it will be virtually 100% if the present trends continue. In 1960, the non-white population, ages 0 years to 19 years, was as follows:

0— 4 years	42%
5— 9 years	36%
10—14 years	28%
15—19 years	18%

In 1970 the non-white population, ages 0 years to 19 years, was as follows:

0— 4 years	48%
5— 9 years	50%
10—14 years	50%
15—19 years	40%

The black population as a percentage of the total population in the City of Detroit was:

(a)	1900	1.4%
(b)	1910	1.2%
(c)	1920	4.1%
(d)	1930	7.7%
(e)	1940	9.2%
(f)	1950	16.2%
(g)	1960	28.9%
(h)	1970	43.9%

The black population as a percentage of total student population of the Detroit Public Schools was as follows:

(a)	1961	45.8%
(b)	1963	51.3%
(c)	1964	53.0%
(d)	1965	54.8%
(e)	1966	56.7%
(f)	1967	58.2%
(g)	1968	59.4%
(h)	1969	61.5%
(i)	1970	63.8%

For the years indicated the housing characteristics in the City of Detroit were as follows:

(a)	1960	total supply of housing units was 553,000
(b)	1970	total supply of housing units was 530,770

The percentage decline in the white students in the Detroit Public Schools during the period 1961-1970 (53.6% in 1960; 34.8% in 1970) has been greater than the percentage decline in the white population in the City of

Detroit during the same period (70.8% in 1960; 55.21% in 1970), and correlatively, the percentage increase in black students in the Detroit Public Schools during the nine-year period 1961-1970 (45.8% in 1961; 63.8% in 1970) has been greater than the percentage increase in the black population of the City of Detroit during the ten-year period 1960-1970 (28.9% in 1960; 43.9% in 1970). In 1961 there were eight schools in the system without white pupils and 73 schools with no Negro pupils. In 1970 there were 30 schools with no white pupils and 11 schools with no Negro pupils, an increase in the number of schools without white pupils of 22 and a decrease in the number of schools without Negro pupils of 62 in this ten-year period. Between 1968 and 1970 Detroit experienced the largest increase in percentage of black students in the student population of any major northern school district. The percentage increase in Detroit was 4.7% as contrasted with—

New York	2.0%
Los Angeles	1.5%
Chicago	1.9%
Philadelphia	1.7%
Cleveland	1.7%
Milwaukee	2.6%
St. Louis	2.6%
Columbus	1.4%
Indianapolis	2.6%
Denver	1.1%
Boston	3.2%
San Francisco	1.5%
Seattle	2.4%

In 1960, there were 266 schools in the Detroit School system. In 1970, there were 319 schools in the Detroit School system.

In the Western, Northwestern, Northern, Murray, Northeastern, Kettering, King and Southeastern high school service areas, the following conditions exist at a level significantly higher than the city average:

(a) Poverty in children

(b) Family income below poverty level

(c) Rate of homicides per population

(d) Number of households headed by females

(e) Infant mortality rate

(f) Surviving infants with neurological defects

(g) Tuberculosis cases per 1,000 population

(h) High pupil turnover in schools

The City of Detroit is a community generally divided by racial lines. Residential segregation within the city and throughout the larger metropolitan area is substantial, pervasive and of long standing. Black citizens are located in separate and distinct areas within the city and are not generally to be found in the suburbs. While the racially unrestricted choice of black persons and economic factors may have played some part in the development of this pattern of residential segregation, it is, in the main, the result of past and present practices and customs of racial discrimination, both public and private, which have and do restrict the housing opportunities of black people. On the record there can be no other finding.

Governmental actions and inaction at all levels, federal, state and local, have combined, with those of private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish and to

maintain the pattern of residential segregation throughout the Detroit metropolitan area. It is no answer to say that restricted practices grew gradually (as the black population in the area increased between 1920 and 1970), or that since 1948 racial restrictions on the ownership of real property have been removed. The policies pursued by both government and private persons and agencies have a continuing and present effect upon the complexion of the community—as we know, the choice of a residence is a relatively infrequent affair. For many years FHA and VA openly advised and advocated the maintenance of "harmonious" neighborhoods, *i.e.*, racially and economically harmonious. The conditions created continue. While it would be unfair to charge the present defendants with what other governmental officers of agencies have done, it can be said that the actions or the failure to act by the responsible school authorities, both city and state, were linked to that of these other governmental units. When we speak of governmental action we should not view the different agencies as a collection of unrelated units. Perhaps the most that can be said is that all of them, including the school authorities, are, in part, responsible for the segregated condition which exists. And we note that just as there is an interaction between residential patterns and the racial composition of the schools, so there is a corresponding effect on the residential pattern by the racial composition of the schools.

Turning now to the specific and pertinent (for our purposes) history of the Detroit school system so far as it involves both the local school authorities and the state school authorities, we find the following:

During the decade beginning in 1950 the Board created and maintained optional attendance zones in neighborhoods undergoing racial transition and between high school at-

tendance areas of opposite predominant racial compositions. In 1959 there were eight basic optional attendance areas affecting 21 schools. Optional attendance areas provided pupils living within certain elementary areas a choice of attendance at one of two high schools. In addition there was at least one optional area either created or existing in 1960 between two junior high schools of opposite predominant racial components. All of the high school optional areas, except two, were in neighborhoods undergoing racial transition (from white to black) during the 1950s. The two exceptions were: (1) the option between Southwestern (61.6% black in 1960) and Western (15.3% black); (2) the option between Denby (0% black) and Southeastern (30.9% black). With the exception of the Denby-Southeastern option (just noted) all of the options were between high schools of opposite predominant racial compositions. The Southwestern-Western and Denby-Southeastern optional areas are all white on the 1950, 1960 and 1970 census maps. Both Southwestern and Southeastern, however, had substantial white pupil populations, and the option allowed whites to escape integration. The natural, probable, foreseeable and actual effect of these optional zones was to allow white youngsters to escape identifiably "black" schools. There had also been an optional zone (eliminated between 1956 and 1959) created in "an attempt . . . to separate Jews and Gentiles within the system," the effect of which was that Jewish youngsters went to Mumford High School and Gentile youngsters went to Cooley. Although many of these optional areas had served their purpose by 1960 due to the fact that most of the areas had become predominantly black, one optional area (Southwestern-Western affecting Wilson Junior High graduates) continued until the present school year (and will continue to effect 11th and 12th grade white youngsters who elected to escape from predominantly black Southwestern to predominantly white Western High

School). Mr. Henrickson, the Board's general fact witness, who was employed in 1959 to, *inter alia*, eliminate optional areas, noted in 1967 that: "In operation Western appears to be still the school to which white students escape from predominantly Negro surrounding schools." The effect of eliminating this optional area (which affected only 10th graders for the 1970-71 school year) was to decrease Southwestern from 86.7% black in 1969 to 74.3% black in 1970.

The Board, in the operation of its transportation to relieve overcrowding policy, has admittedly bused black pupils past or away from closer white schools with available space to black schools. This practice has continued in several instances in recent years despite the Board's avowed policy, adopted in 1967, to utilize transportation to increase integration.

With one exception (necessitated by the burning of a white school), defendant Board has never bused white children to predominantly black schools. The Board has not bused white pupils to black schools despite the enormous amount of space available in inner-city schools. There were 22,961 vacant seats in schools 90% or more black.

The Board has created and altered attendance zones, maintained and altered grade structures and created and altered feeder school patterns in a manner which has had the natural, probable and actual effect of continuing black and white pupils in racially segregated schools. The Board admits at least one instance where it purposefully and intentionally built and maintained a school and its attendance zone to contain black students. Throughout the last decade (and presently) school attendance zones of opposite racial compositions have been separated by north-south boundary lines, despite the Board's awareness (since at least 1962) that drawing boundary lines in an east-west direction would result in significant integration. The

natural and actual effect of these acts and failures to act has been the creation and perpetuation of school segregation. There has never been a feeder pattern or zoning change which placed a predominantly white residential area into a predominantly black school zone or feeder pattern. Every school which was 90% or more black in 1960, and which is still in use today, remains 90% or more black. Whereas 65.8% of Detroit's black students attended 90% or more black schools in 1960, 74.9% of the black students attended 90% or more black schools during the 1970-71 school year.

The public schools operated by defendant Board are thus segregated on a racial basis. This racial segregation is in part the result of the discriminatory acts and omissions of defendant Board.

In 1966 the defendant State Board of Education and Michigan Civil Rights Commission issued a Joint Policy Statement on Equality of Educational Opportunity, requiring that

> "Local school boards must consider the factor of racial balance along with other educational considerations in making decisions about selection of new school sites, expansion of present facilities .... Each of these situations presents an opportunity for integration."

Defendant State Board's "School Plant Planning Handbook" requires that

> "Care in site location must be taken if a serious transportation problem exists or if housing patterns in an area would result in a school largely segregated on racial, ethnic, or socio-economic lines."

The defendant City Board has paid little heed to these statements and guidelines. The State defendants have similarly failed to take any action to effectuate these policies. Exhibit NN reflects construction (new or additional) at 14 schools which opened for use in 1970-71; of these 14 schools, 11 opened over 90% black and one opened less than 10% black. School construction costing $9,222,000 is opening at Northwestern High School which is 99.9% black, and new construction opens at Brooks Junior High, which is 1.5% black, at a cost of $2,500,000. The construction at Brooks Junior High plays a dual segregatory role: not only is the construction segregated, it will result in a feeder pattern change which will remove the last majority white school from the already almost all-black Mackenzie High School attendance area.

Since 1959 the Board has constructed at least 13 small primary schools with capacities of from 300 to 400 pupils. This practice negates opportunities to integrate, "contains" the black population and perpetuates and compounds school segregation.

The State and its agencies, in addition to their general responsibility for and supervision of public education, have acted directly to control and maintain the pattern of segregation in the Detroit schools. The State refused, until this session of the legislature, to provide authorization or funds for the transportation of pupils within Detroit regardless of their poverty or distance from the school to which they were assigned, while providing in many neighboring, mostly white, suburban districts the full range of state supported transportation. This and other financial limitations, such as those on bonding and the working of the state aid formula whereby suburban districts were able to make far larger per pupil expenditures despite less tax effort, have created and perpetuated systematic educational inequalities.

The State, exercising what Michigan courts have held to be is "plenary power" which includes power "to use a statutory scheme, to create, alter, reorganize or even dissolve a school district, despite any desire of the school district, its board, or the inhabitants thereof," acted to reorganize the school district of the City of Detroit.

The State acted through Act 48 to impede, delay and minimize racial integration in Detroit schools. The first sentence of Sec. 12 of the Act was directly related to the April 7, 1970 desegregation plan. The remainder of the section sought to prescribe for each school in the eight districts criterion of "free choice" (open enrollment) and "neighborhood schools" ("nearest school priority acceptance"), which had as their purpose and effect the maintenance of segregation.

In view of our findings of fact already noted we think it unnecessary to parse in detail the activities of the local board and the state authorities in the area of school construction and the furnishing of school facilities. It is our conclusion that these activities were in keeping, generally, with the discriminatory practices which advanced or perpetuated racial segregation in these schools.

It would be unfair for us not to recognize the many fine steps the board has taken to advance the cause of quality education for all in terms of racial integration and human relations. The most obvious of these is in the field of faculty integration.

Plaintiffs urge the Court to consider allegedly discriminatory practices of the Board with respect to the hiring, assignment and transfer of teachers and school administrators during a period reaching back more than 15 years. The short answer to that must be that black teachers and school

administrative personnel were not readily available in that period. The Board and the intervening defendant union have followed a most advanced and exemplary course in adopting and carrying out what is called the "balanced staff concept"—which seeks to balance faculties in each school with respect to race, sex and experience, with primary emphasis on race. More particularly, we find:

1. With the exception of affirmative policies designed to achieve racial balance in instructional staff, no teacher in the Detroit Public Schools is hired, promoted or assigned to any school by reason of his race.

2. In 1956, the Detroit Board of Education adopted the rules and regulations of the Fair Employment Practices Act as its hiring and promotion policy and has adhered to this policy to date.

3. The Board has actively and affirmatively sought out and hired minority employees, particularly teachers and administrators, during the past decade.

4. Between 1960 and 1970, the Detroit Board of Education has increased black representation among its teachers from 23.3% to 42.1%, and among its administrators from 4.5% to 37.8%.

5. Detroit has a higher proportion of black administrators than any other city in the country.

6. Detroit ranked second to Cleveland in 1968 among the 20 largest northern city school districts in the percentage of blacks among the teaching faculty and in 1970 surpassed Cleveland by several percentage points.

7. The Detroit Board of Education currently employs black teachers in a greater percentage than the percentage of adult black persons in the City of Detroit.

8. Since 1967, more blacks than whites have been placed in high administrative posts with the Detroit Board of Education.

9. The allegation that the Board assigns black teachers to black schools is not supported by the record.

10. Teacher transfers are not granted in the Detroit Public Schools unless they conform with the balanced staff concept.

11. Between 1960 and 1970, the Detroit Board of Education reduced the percentage of schools without black faculty from 36.3% to 1.2%, and of the four schools currently without black faculty, three are specialized trade schools where minority faculty cannot easily be secured.

12. In 1968, of the 20 largest northern city school districts, Detroit ranked fourth in the percentage of schools having one or more black teachers and third in the percentage of schools having three or more black teachers.

13. In 1970, the Board held open 240 positions in schools with less than 25% black, rejecting white applicants for these positions until qualified black applicants could be found and assigned.

14. In recent years, the Board has come under pressure from large segments of the black community to assign male black administrators to predominantly black schools to serve as male role models for students, but such assignments have been made only where consistent with the balanced staff concept.

15. The numbers and percentages of black teachers in Detroit increased from 2,275 and 21.6%, respectively, in

February, 1961, to 5,106 and 41.6%, respectively, in October, 1970.

16. The number of schools by percent black of staffs changed from October, 1963 to October, 1970 as follows:

Number of schools without black teachers—decreased from 41, to 4.

Number of schools with more than 0%, but less than 10% black teachers—decreased from 58, to 8.

Total number of schools with less than 10% black teachers—decreased from 99, to 12.

Number of schools with 50% or more black teachers—increased from 72, to 124.

17. The number of schools by percent black of staffs changed from October, 1969 to October, 1970, as follows:

Number of schools without black teachers—decreased from 6, to 4.

Number of schools with more than 0%, but less than 10% black teachers—decreased from 41, to 8.

Total number of schools with less than 10% black teachers—decreased from 47, to 12.

Number of schools with 50% or more black teachers—increased from 120, to 124.

18. The total number of transfers necessary to achieve a faculty racial quota in each school corresponding to the system-wide ratio, and ignoring all other elements is, as of 1970, 1,826.

19. If account is taken of other elements necessary to assure quality integrated education, including qualifications to teach the subject area and grade level, balance of

experience, and balance of sex, and further account is taken of the uneven distribution of black teachers by subject taught and sex, the total number of transfers which would be necessary to achieve a faculty racial quota in each school corresponding to the system-wide ratio, if attainable at all, would be infinitely greater.

20. Balancing of staff by qualifications for subject, and grade level, then by race, experience and sex, is educationally desirable and important.

21. It is important for students to have a successful role model, especially black students in certain schools, and at certain grade levels.

22. A quota of racial balance for faculty in each school which is equivalent to the system-wide ratio and without more is educationally undesirable and arbitrary.

23. A severe teacher shortage in the 1950s and 1960s impeded integration-of-faculty opportunities.

24. Disadvantageous teaching conditions in Detroit in the 1960s—salaries, pupil mobility and transiency, class size, building conditions, distance from teacher residence, shortage of teacher substitutes, etc.—made teacher recruitment and placement difficult.

25. The Board did not segregate faculty by race, but rather attempted to fill vacancies with certified and qualified teachers who would take offered assignments.

26. Teacher seniority in the Detroit system, although measured by system-wide service, has been applied consistently to protect against involuntary transfers and "bumping" in given schools.

27. Involuntary transfers of teachers have occurred only because of unsatisfactory ratings or because of decrease of teacher services in a school, and then only in accordance with balanced staff concept.

28. There is no evidence in the record that Detroit teacher seniority rights had other than equitable purpose or effect.

29. Substantial racial integration of staff can be achieved, without disruption of seniority and stable teaching relationships, by application of the balanced staff concept to naturally occurring vacancies and increases and reductions of teacher services.

30. The Detroit Board of Education has entered into successive collective bargaining contracts with the Detroit Federation of Teachers, which contracts have included provisions promoting integration of staff and students.

The Detroit School Board has, in many other instances and in many other respects, undertaken to lessen the impact of the forces of segregation and attempted to advance the cause of integration. Perhaps the most obvious one was the adoption of the April 7 Plan. Among other things, it has denied the use of its facilities to groups which practice racial discrimination; it does not permit the use of its facilities for discriminatory apprentice training programs; it has opposed state legislation which would have the effect of segregating the district; it has worked to place black students in craft positions in industry and the building trades; it has brought about a substantial increase in the percentage of black students in manufacturing and construction trade apprenticeship classes; it became the first public agency in Michigan to adopt and implement a policy requiring affirmative act of contractors with which it deals

to insure equal employment opportunities in their work forces; it has been a leader in pioneering the use of multi-ethnic instructional material, and in so doing has had an impact on publishers specializing in producing school texts and instructional materials; and it has taken other noteworthy pioneering steps to advance relations between the white and black races.

In conclusion, however, we find that both the State of Michigan and the Detroit Board of Education have committed acts which have been causal factors in the segregated condition of the public schools of the City of Detroit. As we assay the principles essential to a finding of de jure segregation, as outlined in rulings of the United States Supreme Court, they are:

1. The State, through its officers and agencies, and usually, the school administration, must have taken some action or actions with a purpose of segregation.

2. This action or these actions must have created or aggravated segregation in the schools in question.

3. A current condition of segregation exists. We find these tests to have been met in this case. We recognize that causation in the case before us is both several and comparative. The principal causes undeniably have been population movement and housing patterns, but state and local governmental actions, including school board actions, have played a substantial role in promoting segregation. It is, the Court believes, unfortunate that we cannot deal with public school segregation on a no-fault basis, for if racial segregation in our public schools is an evil, then it should make no difference whether we classify it de jure or de facto. Our objective, logically, it seems to us, should be to remedy a condition which we believe needs correction.

In the most realistic sense, if fault or blame must be found it is that of the community as a whole, including, of course, the black components. We need not minimize the effect of the actions of federal, state and local governmental officers and agencies, and the actions of loaning institutions and real estate firms, in the establishment and maintenance of segregated residential patterns—which lead to school segregation—to observe that blacks, like ethnic groups in the past, have tended to separate from the larger group and associate together. The ghetto is at once both a place of confinement and a refuge. There is enough blame for everyone to share.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter of this action under 28 U.S.C. 1331(a), 1343(3) and (4), 2201 and 2202; 42 U.S.C. 1983, 1988, and 2000d.

2. In considering the evidence and in applying legal standards it is not necessary that the Court find that the policies and practices, which it has found to be discriminatory, have as their motivating forces any evil intent or motive. *Keyes v. Sch. Dist. #1, Denver,* 383 F. Supp. 279. Motive, ill will and bad faith have long ago been rejected as a requirement to invoke the protection of the Fourteenth Amendment against racial discrimination. *Sims v. Georgia,* 389 U.S. 404, 407-8.

3. School districts are accountable for the natural, probable and forseeable consequences of their policies and practices, and where racially identifiable schools are the result of such policies, the school authorities bear the burden of showing that such policies are based on educationally

required, non-racial considerations. *Keyes v. Sch. Dist., supra,* and *Davis v. Sch. Dist. of Pontiac,* 309 F. Supp. 734, and 443 F.2d 573.

4. In determining whether a constitutional violation has occurred, proof that a pattern of racially segregated schools has existed for a considerable period of time amounts to a showing of racial classification by the state and its agencies, which must be justified by clear and convincing evidence. *State of Alabama v. U.S.,* 304 F.2d 583.

5. The Board's practice of shaping school attendance zones on a north-south rather than an east-west orientation, with the result that zone boundaries conformed to racial residential dividing lines, violated the Fourteenth Amendment. *Northcross v. Bd. of Ed., Memphis,* 333 F.2d 661.

6. Pupil racial segregation in the Detroit Public School System and the residential racial segregation resulting primarily from public and private racial discrimination are interdependent phenomena. The affirmative obligation of the defendant Board has been and is to adopt and implement pupil assignment practices and policies that compensate for and avoid incorporation into the school system the effects of residential racial segregation. The Board's building upon housing segregation violates the Fourteenth Amendment. See, *Davis v. Sch. Dist. of Pontiac, supra,* and authorities there noted.

7. The Board's policy of selective optional attendance zones, to the extent that it facilitated the separation of pupils on the basis of race, was in violation of the Fourteenth Amendment. *Hobson v. Hansen,* 269 F. Supp, 401, *aff'd sub nom., Smuck v. Hobson,* 408 F.2d 175.

8. The practice of the Board of transporting black students from overcrowded black schools to other identifiably black schools, while passing closer identifiably white schools, which could have accepted these pupils, amounted to an act of segregation by the school authorities. *Spangler v. Pasadena City Bd. of Ed.*, 311 F. Supp. 501.

9. The manner in which the Board formulated and modified attendance zones for elementary schools had the natural and predictable effect of perpetuating racial segregation of students. Such conduct is an act of de jure discrimination in violation of the Fourteenth Amendment. *U.S. v. School District 151*, 286 F. Supp. 786; *Brewer v. City of Norfolk*, 397 F.2d 37.

10. A school board may not, consistent with the Fourteenth Amendment, maintain segregated elementary schools or permit educational choices to be influenced by community sentiment or the wishes of a majority of voters. *Cooper v. Aaron*, 358 U.S. 1, 12-13, 15-16.

> "A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be." Lucas v. 44th Gen'l Assembly of Colorado, 377 U.S. 713, 736-737.

11. Under the Constitution of the United States and the constitution and laws of the State of Michigan, the responsibility for providing educational opportunity to all children on constitutional terms is ultimately that of the state. *Turner v. Warren County Board of Education*, 313 F. Supp. 380; Art. VIII, §§ 1 and 2, Mich. Constitution; *Dasiewicz v. Bd. of Ed. of the City of Detroit*, 3 N.W.2d 71.

12. That a state's form of government may delegate the power of daily administration of public schools to

officials with less than state-wide jurisdiction does not dispel the obligation of those who have broader control to use the authority they have consistently with the constitution. In such instances the constitutional obligation toward the individual school children is a shared one. *Bradley v. Sch. Bd., City of Richmond,* 51 F.R.D. 139, 143.

13. Leadership and general supervision over all public education is vested in the State Board of Education. Art. VIII, § 3, Mich. Constitution of 1963. The duties of the State Board and superintendent include, but are not limited to, specifying the number of hours necessary to constitute a school day; approval until 1962 of school sites; approval of school construction plans; accreditation of schools; approval of loans based on state aid funds; review of suspensions and expulsions of individual students for misconduct [Op. Atty. Gen., July 7, 1970, No. 4705]; authority over transportation routes and disbursement of transportation funds; teacher certification and the like. M.S.A. 15.1023(1). State law provides review procedures from actions of local or intermediate districts (See M.S.A. 15.3442), with authority in the State Board to ratify, reject, amend or modify the actions of these inferior state agencies. See M.S.A. 15.3467; 15.1919(61); 15.1919(68b); 15.2299(1); 15.1961; 15.3402; *Bridgehampton School District No. 2 Fractional of Carsonville, Mich. v. Supt. of Public Instruction,* 323 Mich. 615. In general, the state superintendent is given the duty "[t]o do all things necessary to promote the welfare of the public schools and public educational instructions and provide proper educational facilities for the youth of the state." M.S.A. 15.3252. See also M.S.A. 15.2299(57), providing in certain instances for reorganization of school districts.

14. State officials, including all of the defendants, are charged under the Michigan constitution with the duty

of providing pupils an education without discrimination with respect to race. Art. VIII, § 2, Mich. Constitution of 1963. Art. I, § 2, of the constitution provides:

> "No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation."

15. The State Department of Education has recently established an Equal Educational Opportunities section having responsibility to identify racially imbalanced school districts and develop desegregation plans. M.S.A. 15.3355 provides that no *school* or department shall be kept for any person or persons on account of race or color.

16. The state further provides special funds to local districts for compensatory education which are administered on a per school basis under direct review of the State Board. All other state aid is subject to fiscal review and accounting by the state. M.S.A. 15.1919. See also M.S.A. 15.1919(68b), providing for special supplements to merged districts "for the purpose of bringing about uniformity of educational opportunity for all pupils of the district." The general consolidation law M.S.A. 15.3401 authorizes annexation for even noncontiguous school districts upon approval of the superintendent of public instruction and electors, as provided by law. Op. Atty. Gen., Feb. 5, 1964, No. 4193. Consolidation with respect to so-called "first class" districts, *i.e.*, Detroit, is generally treated as an annexation with the first class district being the surviving entity. The law provides procedures covering all necessary considerations. M.S.A. 15.3184, 15.3186.

17. Where a pattern of violation of constitutional rights is established the affirmative obligation under the Fourteenth Amendment is imposed on not only individual school districts, but upon the State defendants in this case. *Cooper v. Aaron,* 358, U.S. 1; *Griffin v. County School Board of Prince Edward County,* 337 U.S. 218; *U.S. v. State of Georgia,* Civ. No. 12972 (N.D. Ga., December 17, 1970), *rev'd on other grounds,* 428 F.2d 377; *Godwin v. Johnston County Board of Education,* 301 F. Supp. 1337; *Lee v. Macon County Board of Education,* 267 F. Supp. 458 (M.D. Ala.), *aff'd sub nom., Wallace v. U.S.,* 389 U.S. 215; *Franklin v. Quitman County Board of Education,* 288 F. Supp. 509; *Smith v. North Carolina State Board of Education,* No. 15,072 (4th Cir., June 14, 1971).

The foregoing constitutes our findings of fact and conclusions of law on the issue of segregation in the public schools of the City of Detroit.

Having found a de jure segregated public school system in operation in the City of Detroit, our first step, in considering what judicial remedial steps must be taken, is the consideration of intervening parent defendants' motion to add as parties defendant a great number of Michigan school districts located out county in Wayne County, and in Macomb and Oakland Counties, on the principal premise or ground that effective relief cannot be achieved or ordered in their absence. Plaintiffs have opposed the motion to join the additional school districts, arguing that the presence of the State defendants is sufficient and all that is required, even if, in shaping a remedy, the affairs of these other districts will be affected.

In considering the motion to add the listed school districts we pause to note that the proposed action has to do with relief. Having determined that the circumstances

of the case require judicial intervention and equitable relief, it would be improper for us to act on this motion until the other parties to the action have had an opportunity to submit their proposals for desegregation. Accordingly, we shall not rule on the motion to add parties at this time. Considered as a plan for desegregation the motion is lacking in specifity and is framed in the broadest general terms. The moving party may wish to amend its proposal and resubmit *it* as a comprehensive plan of desegregation.

In order that the further proceedings in this cause may be conducted on a reasonable time schedule, and because the views of counsel respecting further proceedings cannot but be of assistance to them and to the Court, this cause will be set down for *pre-trial* conference on the matter of relief. The conference will be held in our Courtroom in the City of Detroit at ten o'clock in the morning, October 4, 1971.

DATED: Sept. 27, 1971.

STEPHEN J. ROTH /s/
Stephen J. Roth
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al., Plaintiffs, v. WILLIAM G. MILLIKEN, et al., Defendants, DETROIT FEDERATION OF TEACHERS, LOCAL No. 231, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, Defendant-Intervenor, and DENISE MAGDOWSKI, et al., Defendants-Intervenor	CIVIL ACTION NO. 35257

ORDER OF NOVEMBER 5, 1971

At a session of said Court held in the Federal Building, City of Detroit, on this 4th day of OCTOBER, A.D. 1971.

Present: HONORABLE STEPHEN J. ROTH
United States District Judge

The Court having entered its findings of fact and conclusions of law on the issue of segregation on September 27, 1971;

IT IS ORDERED that the Detroit Board of Education submit a report on and an evaluation of the so-called Magnet Plan within 30 days; and that other parties litigant may within 10 days thereafter file responses to such report and evaluation.

IT IS FURTHER ORDERED that the Detroit Board of Education submit a plan for the desegregation of its schools within 60 days.

IT IS FUTHER ORDERED that the State defendants submit a metropolitan plan of desegregation within 120 days.

IT IS FURTHER ORDERED that as to both the Detroit and the State plans, other parties litigant shall have an additional 30 days in which to submit objections and/or alternate plans.

STEPHEN J. ROTH /s/
United States District Judge

DATE SIGNED: November 5, 1971.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al., Plaintiffs, v. WILLIAM G. MILLIKEN, et al., Defendants, DETROIT FEDERATION OF TEACHERS, LOCAL No. 231, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, Defendant-Intervenor, and DENISE MAGDOWSKI, et al., Defendants-Intervenor *et al.*	CIVIL ACTION NO. 35257

RULING ON PROPRIETY OF CONSIDERING A METROPOLITAN REMEDY TO ACCOMPLISH DESEGREGATION OF THE PUBLIC SCHOOLS OF THE CITY OF DETROIT

In its prior ruling, "Ruling on Issue of Segregation" (September 27, 1971), the court has found that segregation exists in the public schools of the City of Detroit because of, among other causes, the acts of the State of Michigan and the Detroit Board of Education. In the language of *Swann*,[1] "a right and a violation have been

shown."[2] Given the constitutional violation, judicial authority, when properly invoked, must be exercised to right the wrong. In addressing itself to this task the Supreme Court has said that the "scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."[3] And, it pointed out, "a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right."[4] The task is to correct the condition which offends the Constitution. Illustrative of what was meant by the Supreme Court, see the legislative and congressional reapportionment cases.[5]

Under the circumstances of this case,[6] the question presented is whether the court may consider relief in the form of a metropolitan plan, encompassing not only the City of Detroit, but the larger Detroit metropolitan area which, for the present purposes, we may define as comprising the three counties of Wayne, Oakland and Macomb. It should be noted that the court has just concluded its hearing on plans submitted by the plaintiffs and the Detroit Board of Education for the intra-city

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[1]
Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1.

[2]
Ibid., p. 15.

[3]
Ibid., p. 15.

[4]
Ibid., pp. 15, 16.

[5]
Reynolds v. Sims, 377 U.S. 533.

[6]
See "Ruling on Issue of Segregation," supra, indicating a black student projection for the school year 1980-81 of 80.7%.

desegregation of the Detroit public schools. A ruling has not yet been made on these plans, but in accordance with the mandate of the Court of Appeals that a hearing on the merits be concluded at the earliest possible time, we consider it necessary to proceed apace with a resolution of the issue before us, *i.e.*, the propriety of weighing the legal availability of a metropolitan remedy for segregation.

The State defendants in this case take the position, as we understand it, that no "state action" has had a part in the segregation found to exist. This assertion disregards the findings already made by this court, and the decision of the Court of Appeals as well.[7] Additionally, they appear to view the delegation of the State's powers and duties with respect to education to local governmental bodies as vesting the latter with sovereign powers which may not be disturbed by either the State or the court. This we cannot accept. Political subdivisions of the states have never been considered sovereign entities, rather "they have been traditionally regarded as subordinate governmental instrumentalities created by the state to assist it in carrying out of state governmental functions." *Reynolds v. Sims,* 377 U.S. 533, 575. Perhaps the clearest refutation of the State's asserted lack of power to act in the field of education is Act 48 of 1970. The State cannot evade its constitutional responsibility by a delegation of powers to local units of government. The State defendants' position is in error in two other respects: 1. The local school districts are not fully autonomous bodies, for the extent it has seen fit the State retains control and supervision; and 2. It assumes that

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[7] See "Ruling on Issue of Segregation," supra; Bradley v. Milliken, 433 F.2d 897.

any metropolitan plan, if one is adopted, would, of necessity, require the dismantling of school districts included in the plan.

The main thrust of the objections to the consideration of a metropolitan remedy advanced by intervening school districts is that, absent a finding of acts of segregation on their part, individually, they may not be considered in fashioning a remedy for relief of the plaintiffs. It must be conceded that the Supreme Court has not yet ruled directly on this issue; accordingly, we can only proceed by feeling our way through its past decisions with respect to the goal to be achieved in school desegregation cases. *Green v. County School Board,* 391 U.S. 430, teaches us that it is our obligation to assess the effectiveness of proposed plans of desegregation in the light of circumstances present and the available alternatives; and to choose the alternative or alternatives which promise realistically to work now and hereafter to produce the maximum actual desegregation. As Chief Justice Burger said in *Swann,* "in seeking to define the scope of remedial power of courts in an area as sensitive as we deal with here, words are poor instruments to convey the sense of basic fairness inherent in equity." Substance, not semantics, must govern.

It seems to us that *Brown*[8] is dispositive of the issue:

> "In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools

as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them."

• • •

" • • • the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation systems, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems."

We conclude that it is proper for the court to consider metropolitan plans directed toward the desegregation of the Detroit public schools as an alternative to the present intra-city desegregation plans before it and, in the event that the court finds such intra-city plans inadequate to desegrate such schools, the court is of the opinion that it is required to consider a metropolitan remedy for desegregation.

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[8]

Brown v. Bd. of Ed. of Topeka, 349 U.S. 294, at 300 and 301.

The schedule previously established for the hearing on metropolitan plans will go forward as noticed, beginning March 28, 1972.

DATE: March 24th, 1972.

STEPHEN J. ROTH /s/
Stephen J. Roth
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD BRADLEY, et al., Plaintiffs, v. WILLIAM G. MILLIKEN, et al., Defendants, DETROIT FEDERATION OF TEACHERS, LOCAL No. 231, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, Defendant-Intervenor, and DENISE MAGDOWSKI, et al., Defendants-Intervenor	CIVIL ACTION NO. 35257

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON DETROIT-ONLY PLANS OF DESEGREGATION

In accordance with orders of the court defendant Detroit Board of Education submitted two plans, limited to the corporate limits of the city, for desegregation of the public schools of the City of Detroit, which we will refer to as Plan A and Plan C; plaintiffs submitted a similarly limited plan, which will be referred to as the Foster Plan. Hearings were had on said plans on March

14, 15, 16, 17 and 21, 1972. In considering these plans the court does not limit itself to the proofs offered at the hearing just concluded; it considers as part of the evidence bearing on the issue (*i.e.*, City-Only Plans) all proofs submitted in the case to this point, and it specifically incorporates herein by reference the Findings and Conclusions contained in its "Ruling on Issue of Segregation," filed September 27, 1971.

The court makes the following factual findings:

PLAN A.

1. The court finds that this plan is an elaboration and extension of the so-called Magnet Plan, previously authorized for implementation as an interim plan pending hearing and determination on the issue of segregation.

2. As proposed we find, at the high school level, that it offers a greater and wider degree of specialization, but any hope that it would be effective to desegrate the public schools of the City of Detroit at that level is virtually ruled out by the failure of the current model to achieve any appreciable success.

3. We find, at the Middle School level, that the expanded model would affect, directly, about 24,000 pupils of a total of 140,000 in the grades covered; and its effect would be to set up a school system within the school system, and would intensify the segregation in schools not included in the Middle School program. In this sense, it would increase segregation.

4. As conceded by its author, Plan A is neither a desegregation nor an integration plan.

PLAN C.

1. The court finds that Plan C is a token or part-time desegregation effort.

2. We find that this plan covers only a portion of the grades and would leave the base schools no less racially identifiable.

PLAINTIFFS' PLAN.

1. The court finds that Plaintiffs' Plan would accomplish more desegregation than now obtains in the system, or would be achieved under Plan A or Plan C.

2. We find further that the racial composition of the student body is such that the plan's implementation would clearly make the entire Detroit public school system racially identifiable as Black.

3. The plan would require the development of transportation on a vast scale which, according to the evidence, could not be furnished, ready for operation, by the opening of the 1972-73 school year. The plan contemplates the transportation of 82,000 pupils and would require the acquisition of some 900 vehicles, the hiring and training of a great number of drivers, the procurement of space for storage and maintenance, the recruitment of maintenance and the not negligible task of designing a transportation system to service the schools.

4. The plan would entail an overall recasting of the Detroit school system, when there is little assurance that it would not have to undergo another reorganization if a metropolitan plan is adopted.

5. It would involve the expenditure of vast sums of money and effort which would be wasted or lost.

6. The plan does not lend itself as a building block for a metropolitan plan.

7. The plan would make the Detroit school system more identifiably Black, and leave many of its schools 75 to 90 per cent Black.

8. It would change a school system which is now Black and White to one that would be perceived as Black, thereby increasing the flight of Whites from the city and the system, thereby increasing the Black student population.

9. It would subject the students and parents, faculty and administration, to the trauma of reassignments, with little likelihood that such reassignments would continue for any appreciable time.

In summary, we find that none of the three plans would result in the desegregation of the public schools of the Detroit school district.

CONCLUSIONS OF LAW

1. The court has continuing jurisdiction of this action for all purposes, including the granting of effective relief. See Ruling on Issue of Segregation, September 27, 1971.

2. On the basis of the court's finding of illegal school segregation, the obligation of the school defendants is to adopt and implement an educationally sound, practi-

cable plan of desegregation that promises realistically to achieve now and hereafter the greatest possible degree of actual school desegregation. *Green v. County School Board,* 391 U.S. 430; *Alexander v. Holmes County Board of Education,* 396 U.S. 19; *Carter v. West Feliciana Parish School Board,* 396 U.S. 290; *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U.S. 1.

3. Detroit Board of Education Plans A and C are legally insufficient because they do not promise to effect significant desegregation. *Green v. County School Board, supra,* at 439-440.

4. Plaintiffs' Plan, while it would provide a racial mix more in keeping with the Black-White proportions of the student population than under either of the Board's plans or as the system now stands, would accentuate the racial identifiability of the district as a Black school system, and would not accomplish desegregation.

5. The conclusion, under the evidence in this case, is inescapable that relief of segregation in the public schools of the City of Detroit cannot be accomplished within the corporate geographical limits of the city. The State, however, cannot escape its constitutional duty to desegregate the public schools of the City of Detroit by pleading local authority. As Judge Merhige pointed out in *Bradley v. Richmond,* (slip opinion p. 64):

> "The power conferred by state law on central and local officials to determine the shape of school attendance units cannot be employed, as it has been here, for the purpose and with the effect of sealing off White conclaves of a racial composition more appealing to the local electorate and obstructing the desegregation of schools. The equal protection clause

has required far greater inroads on local government structure than the relief sought here, which is attainable without deviating from state statutory forms. Compare Reynolds v. Sims, 377 U.S. 533; Gomillion v. Lightfoot, 364 U.S. 339; Serrano v. Priest, 40 U.S. L.W. 2128 (Calif. Sup. Ct. Aug. 30, 1971).

"In any case, if political boundaries amount to insuperable obstacles to desegration because of structural reason, such obstacles are self-imposed. Political subdivision lines are creations of the state itself, after all."

School district lines are simply matters of political convenience and may not be used to deny constitutional rights. If the boundary lines of the school districts of the City of Detroit and the surrounding suburbs were drawn today few would doubt that they could not withstand constitutional challenge. In seeking for solutions to the problem of school segregation, other federal courts have not "treated as immune from intervention the administrative structure of a state's educational system, to the extent that it affects the capacity to desegregate. Geographically or administratively independent units have been compelled to merge or to initiate or continue cooperative operation as a single system for school desegregation purposes."[1]

That the court must look beyond the limits of the Detroit school district for a solution to the problem of segregation in the Detroit public schools is obvious; that it has the authority, nay more, the duty to (under the circumstances of this case) do so appears plainly antici-

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[1]

Bradley v. Richmond, supra (slip opinion p. 68).

pated by Brown II,[2] seventeen years ago. While other school cases have not had to deal with our exact situation,[3] the logic of their application of the command of Brown II supports our view of our duty.

Date: MARCH 28th, 1972.

STEPHEN J. ROTH /s/
Stephen J. Roth
United States District Judge

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[2]

Brown v. Bd. of Ed. of Topeka, 349 U.S. 294, pp. 300-301.

[3]

Haney v. County Board of Education of Sevier County, 410 F.2d 920 (8th Cir. 1969); Bradley v. School Board of the City of Richmond, supra, slip opinion pp. 664-65; Hall v. St. Helena Parish School Board, 197 F. Supp. 649 (E.D. La. 1961), aff'd. 287 F.2d 376 (5th Cir. 1961) and 368 U.S. 515 (1962); Lee v. Macon County Bd. of Educ., 448 F. 2d 746, 752 (5th Cir. 1971); Gomillion v. Lightfoot, 364 U.S. 339 (1960); Turner v. Littleton-Lake Gaston School Dist., 442 F.2d 584 (4th Cir. 1971); United States v. Texas, 447 F.2d 551 (5th Cir. 1971); Lemon v. Bossier Parish School Board, 446 F.2d 911 (5th Cir. 1971).

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RONALD BRADLEY, et al Plaintiffs-Appellees, Cross-Appellants, v. WILLIAM G. MILLIKEN, et al Defendants-Appellants, Cross-Appellee, DETROIT FEDERATION OF TEACHERS LOCAL 231, AMERICAN FEDERATION OF TEACHERS, AFL-CIO Defendant-Intervenor-Appellee, and DENISE MAGDOWSKI, et al Defendants-Intervenor.	NOS. 72-1064 72-1065 72-1066

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Before: CELEBREZZE, MC CREE and KENT, Circuit Judges.

These are appeals from an order entered on November 5, 1971, following a "pretrial conference" held on October 4, 1971. The order from which these appeals are taken requires the parties to submit proposed plans for desegregation of the Detroit schools within a stipulated period of

time which time had not passed at the time the appeals were filed. The order in question is not a final order within the meaning of Title 28 U.S.C. § 1291, neither is it an interlocutory order or decree which may be appealed to this Court under Title 28 U.S.C. § 1292(a).

No party to the action has sought a certificate from the District Court or from this Court for an interlocutory appeal under the provisions of Title 28 U.S.C. § 1292(b). There being no final order from which an appeal may be taken, and the cross-appellants having agreed that their appeal may be dismissed with the original appeal,

IT IS ORDERED that the motions to dismiss the appeals be granted.

ENTERED BY ORDER OF THE
COURT
JAMES A. HIGGINS /s/
Clerk